



April 20, 2005

Floor Speeches

[Senator Burr](#)

[Senator Hatch](#)

[Senator Craig](#)

Noteworthy

[Letter from Newly Elected Republican Senators](#)

[A Fair Process for Selecting Judges by Senator John Cornyn, *Texas Lawyer*, 4/18/05](#)

Audio Clip:

Senator Bill Frist Statement on Judicial vs. Legislative filibuster-

click attached file or visit <http://src.senate.gov/frist/radio> to download the audio.

Events:

Senators Hutchison and Dole discuss nominations of Priscilla Owen and Janice Rogers Brown; 12:00pm, Senate Radio-TV Gallery

Floor Statement of Senator Richard Burr

April 20, 2005

I rise today to urge our leadership and the rest of my colleagues in the United States Senate to preserve the significance of our responsibility, enumerated in the Constitution, and to work together to address the judicial crisis that threatens to severely damage our system.

As members of the Senate, we each bring our own unique background and experience to this institution. And our progress as a body often requires us to make difficult decisions as individuals. While our individual positions on various issues will certainly differ, we must stand together to repair the judicial confirmation process.

Several judicial vacancies have been lingering in our courts for years, causing many jurisdictions, including one in my home state of North Carolina, to be declared “judicial emergencies.” It is our responsibility, as United States Senators, to respond to these judicial emergencies with action and determination.

It is inexcusable that we allow judicial vacancies to linger for six years or, in some cases, longer. Such is the case for the people of my state in the Eastern District of North Carolina. The North Carolina Eastern District post is the longest district court vacancy in the nation-- a seat vacant since 1997. In 1999, the Administrative Office of the Courts declared the district a “judicial emergency” and it has been categorized this way for the last 6 years.

For my state, we face challenges on the appellate level as well. There are 15 circuit court judgeships in the 4th Circuit but only one of these is occupied by a North Carolina judge. North Carolina is significantly underrepresented at the circuit court level. A great deal of this can, of course, be attributed to the political nature of the debate surrounding nominations to the 4th Circuit. But I believe all North Carolinians deserve another voice on the 4th Circuit.

Judge Boyle, currently serving as a District Court Judge for the Eastern District of North Carolina, was nominated in May, 2001, by the President to serve on the 4th Circuit Court of Appeals. The American Bar Association has unanimously rated Judge Boyle as “well-qualified,” and has stated he would make an outstanding appellate judge.

The act of merely considering Judge Boyle’s nomination should not be a political issue for this distinguished body. Unfortunately over the past few years it has become one. Before the 108th Congress, when Judge Boyle was first nominated, no judicial nomination which had a clear majority of Senators supporting the nomination was ever prevented from receiving an up-or-down vote. This current judicial confirmation situation is unprecedented.

We should put aside the grievances that have prevented the consideration of judges through the past three Presidential administrations and work together to find a solution. As Senators we must face this crisis with optimism and confidence. Working together we must address this situation directly because I believe that our constituents do not hope for, nor do they expect, inaction from us on such an important part of our system of government. Partisan bickering or avoidance of our procedural challenges is not a responsible course of action.

Let me be clear--I believe if one of my colleagues objects to a particular judicial nominee it is certainly appropriate and fair for my colleague to vote against that nominee on the

Senate floor. But denying these patriotic Americans, of both parties, who seek to serve this country an up-or-down vote is simply not fair, and it certainly was not the intention of our Founding Fathers when they designed and created this very institution.

As our country plants the seeds of democracy across the world, we have the essential obligation to continue to operate as the model. The integrity of the judicial system is vital and will certainly suffer as a result of inaction. Maintaining our nation's long-standing distinction requires that its legislature act to ensure harmony and balance among its citizens and its branches of government.

We need to fix this broken process. We need to end the judicial crisis. And we need to vote on our judges.

Thank you Mr. President, I yield the floor.

**A Fair Process for Selecting Judges by Senator John Cornyn
Letter to the Editor
Texas Lawyer
April 18, 2005**

The judicial confirmation process in the U.S. Senate has been at times an emotional and politically divisive topic, and that is unfortunate. But all Americans of good faith should at least agree that we need a fair process for selecting judges -- with full investigation, full questioning, full debate and then an up-or-down vote. And all Americans should agree that the rules should be the same regardless of whether the president is a Republican or a Democrat. [See "Nay," Texas Lawyer, April 4, 2005, page 29.] Throughout our nation's more than 200-year history, the constitutional rule and Senate tradition for confirming judges has been majority rule. Senators should uphold and restore that tradition.

**Floor Statement of Orrin G. Hatch
April 20, 2005**

Mr. President, in Lewis Carroll's story *Through the Looking Glass*, Humpty Dumpty has a famous exchange with Alice in which he says: "When I use a word, it means just what I choose it to mean -- neither more nor less." Many partisans in the debate over judicial appointments, both here in the Senate and among interest groups, apparently have the same attitude. Let me offer just two examples.

One is that they play games with the word filibuster.

The current filibusters against judicial nominations have four features. First, they involve defeating attempts to end debate, such as voting against invoking cloture under

Rule 22. Second, they target nominations with clear majority support that would be approved if there were a confirmation vote. Third, they are not about debating these nominations, but about defeating them. And fourth, these filibusters are completely partisan, organized and driven by party leaders.

For two years, Democrats have claimed that these filibusters are nothing new, that they happened before the 108th Congress.

Last Friday, the distinguished Assistant Minority Leader, Senator Durbin, offered his evidence. He put in the record a document titled History of Filibusters and Judges. It was a list of 12 judicial nominations which, it said, “needed 60 (or more) votes – cloture – in order to end a filibuster.” Yet these are filibusters only if, as Humpty Dumpty put it, the word filibuster means whatever you choose it to mean.

Listed first is the 1881 nomination of Stanley Matthews to the Supreme Court. President Rutherford B. Hayes nominated Matthews shortly before leaving office, and the Judiciary Committee postponed consideration. Hayes’ successor, President James Garfield, re-nominated Matthews on March 14, 1881, and the Senate confirmed him on May 12.

On Monday, Senator Nelson of Florida repeated Senator Durbin’s claim that this was the first judicial nomination filibuster in American history. That claim also appears on the website of the left-wing Alliance for Justice, whose president is shopping it around on the talk-radio circuit.

This claim is incomprehensible. There was no cloture vote on the Matthews nomination for a very simple reason: our cloture rule would not even exist for another 36 years. Nor were 60 votes needed, even for confirmation, since the Senate contained only 76 members. The final vote confirming Matthews was 24-23. If we used the Matthews nomination as a model, we would debate judicial nominations, including those re-submitted after a presidential election, and then vote up or down.

The other nominations on Senator Durbin’s list fare no better.

Appeals court nominees Rosemary Barkett and Daniel Manion are on the filibuster list even though we did not take a cloture vote on them.

Eight others, including Republican nominee Edward Carnes and Democrat nominee Stephen Breyer, are on the list even though the Senate voted to invoke cloture on their nominations.

Abe Fortas is on the list even though his nomination was withdrawn after a failed cloture vote showed he did not have majority support and opposition was solidly bipartisan.

And here's the kicker: 11 of the 12 nominees on Senator Durbin's filibuster list were confirmed by the Senate, with nine of them sitting on the federal bench today.

Mr. President, none of these situations bear any resemblance to the filibusters of majority supported judicial nominations underway today.

Let me put this as clearly as I can. Not taking a cloture vote is no precedent for taking a cloture vote. Ending debate is no precedent for not ending debate. Confirming judicial nominations is no precedent for not confirming judicial nominations. And withdrawing nominations lacking majority support is no precedent for refusing to vote on nominations with majority support.

The second word they play with is extremist.

Democrats and their left-wing interest group allies tell us they only use the filibuster against what they call extremist nominees. Trying to define this label, however, is like trying to nail Jello to a cactus in the Utah desert. Like the Constitution in the hands of an activist judge, it means whatever you want it to mean.

No matter what the word means, Senators who truly believe a judicial nominee is an extremist may vote against him. But this is no argument at all for refusing to vote.

As our colleague Senator Kennedy said in February 1998: "We owe it to Americans across the country to give these nominees a vote. If our...colleagues don't like them, vote against them. But give them a vote."

In September 1999, the Judiciary Committee's ranking member, Senator Leahy, similarly said that our oath of office requires us to vote up or down.

Priscilla Owen, nominated by President Bush to the U.S. Court of Appeals for the Fifth Circuit, was re-elected to the Texas Supreme Court in 2000 with 84 percent of the vote, no major party opposition, and the endorsement of every major newspaper in the state. Her opponents call her an extremist. No fewer than 15 presidents of the State Bar of Texas strongly endorse her nomination. Yet, her opponents call her an extremist.

She has been praised by groups such as the Texas Association of Defense Counsel and Legal Aid of Central Texas. Yet, her opponents call her an extremist.

The American Bar Association unanimously gave Justice Owen its highest rating of well qualified. This means she has outstanding legal ability and breadth of experience, the highest reputation for integrity, and such qualities as compassion, open-mindedness, freedom from bias, and commitment to equal justice under law. Yet, some of the very Democrats who once said the ABA rating was the gold standard for evaluating judicial nominees now call Justice Owen an extremist.

Another nominee branded an extremist is California Supreme Court Justice Janice Rogers Brown, nominated to the U.S. Court of Appeals for the D.C. Circuit. She is the

daughter of Alabama sharecroppers who attended segregated schools before receiving her law degree from the University of California at Los Angeles. She has spent a quarter-century in public service, serving in all three branches of state government.

Off the bench, she has given speeches to audiences in which she expressed certain ideas through vivid images, strong rhetoric, and provocative argument. Yet it is what she does on the bench that matters most, and there she has been even-handed, judicious, and impartial.

George Washington University law professor Jonathan Turley knows the difference and recently wrote in the Los Angeles Times: "But however inflammatory her remarks outside the courtroom, Brown's legal opinions show a willingness to vote against conservative views, particularly in criminal cases, when justice demands it."

In recent terms, Justice Brown has written more majority opinions than any of her colleague on the California Supreme Court. Yet some in this body brand her an extremist.

A group of California law professors including Democrats, Republicans, and independents wrote the Judiciary Committee to say that Justice Brown's strongest credential is her open-mindedness and thorough appraisal of legal argumentation "even when her personal views conflict with those arguments." And yet some left-wing interest groups call her an extremist.

A diverse group of her current and former judicial colleagues wrote us that Justice Brown is "a jurist who applies the law without favor, without bias, and with an even hand." It's no wonder that 76 percent of Californians voted to retain her on the state's highest court. Yet, her opponents call her an extremist.

Mr. President, if words mean anything, if we in the United States Senate really want to have a meaningful and responsible debate about such important things, then we should stop playing games with words such as filibuster or extremist. There is no precedent whatsoever for these partisan, organized filibusters against majority supported judicial nominations.

If Senators believe such highly qualified nominees who know the difference between personal and judicial opinions and are widely praised for their integrity and impartiality are extremists, they should vote against them.

Let's have a full and fair debate. Perhaps the critics will win the day. But we must vote.

Mr. President, as I close, let me return to the Matthews nomination for a moment.

In the 47th Congress, a Senate equally divided between Republicans and Democrats confirmed Justice Matthews by a single vote. No doubt some opponents called him many things, perhaps even an extremist.

But we settled the controversy surrounding the Matthews nomination the old-fashioned way, not by filibustering, but by debating and voting.

We should return to that standard.

I yield the floor.

**Letter from Newly Elected Republican Senators
April 19, 2005**

Dear Senators Frist and Reid:

Exactly two years ago this month our preceding United States Senate freshman class of the 108th Congress wrote a letter to the Senate leadership expressing their concerns about the state of the federal judicial nomination and confirmation process. Unfortunately, since then, no significant progress has been made to address these concerns. As Members of the Senate freshman class of the 109th Congress, we again urge our leadership to preserve the significance of our responsibilities enumerated in the Constitution and work together to address the judicial crisis that threatens to severely damage our system in the years to come.

Much like the previous freshman Senate class, we have unique backgrounds to add to the Senate. All of us bring to the table a wealth of experience in the public sector and realize that progress often requires us to make difficult but fair-minded decisions. While some of our individual positions on the many important issues that this Congress will face will differ, we stand together in urging leadership to concentrate on repairing the damaged judicial confirmation process. There is a need for a solid commitment to upholding the equitable principles of our judicial system, a sense of respect for our deeply-rooted process, and a united willingness to compromise.

Several judicial vacancies have been lingering in our courts for years, causing many jurisdictions to declare “judicial emergencies.” It is our responsibility, as United States Senators, to respond to these judicial emergencies with steadfast assertiveness and determination. It is inexcusable that we should have judicial vacancies for up to six, or even in the worst case, 10 years. It is time that we put aside past grievances that have caused obstructionism through the past three Presidential administrations.

We, as newly elected Senators, have the opportunity to face this impasse with renewed optimism and confidence. Like the complex legislative issues we tackle everyday, we

cannot avoid the judicial crisis and its surrounding confirmation issues without expecting our inaction to make a major impact on the American people. As our country plants the seeds of democracy across the world, we have the essential obligation to continue to operate as the model. The integrity of our entire judicial system is on the line and will certainly suffer as a result of inaction.

Therefore, as freshman of the United States Senate for the 109th Congress, we -- in similar fashion to our colleagues of the 108th Congress -- encourage leadership to take a close look at the Senate confirmation process. We believe the Senate must focus its attention toward refining the confirmation process and breaking down the partisan walls that have stood in the way of advancing judicial nominations.

Collectively, we offer strong support of movement on this difficult issue from both sides of the aisle. Maintaining our nation's long-standing honor and distinction requires that its legislature act to ensure harmony and balance among its citizens and its branches of government.

Sincerely,

Senator Richard Burr
Senator Tom Coburn
Senator Jim DeMint
Senator John Isakson
Senator Mel Martinez
Senator John Thune
Senator David Vitter

**THE FILIBUSTER OF JUDICIAL NOMINEES
SENATE FLOOR SPEECH
APRIL 20, 2005
U.S. SENATOR LARRY E. CRAIG**

Mr. CRAIG. Mr. President, is it a religious test? Is it an environmental test? Is it a right to life test? Is it a racial test? No, now it's a Tom Delay test. If it weren't so deadly serious, it would be laughable that the other side has reduced what is a tremendously important constitutional responsibility of this Senate into a political game.

From the very outset, when the Bush Administration came to town, a very clear message was telegraphed across the nation by our colleagues from the other side. Inside their internal party politics and beyond, it was all about politics and who they would disallow the right to have a vote on the floor of the United States Senate when nominated by this President if that nominee made it through the Judiciary Committee -- whether they would be allowed to become a sitting judge in one of the courts of the United States that the President and the Senate are responsible for appointing.

Religious test? Environmental test? A right to life test? A racial test? Now a Tom Delay test. Doesn't the other side have anything of substance to talk about

nowadays? Don't they have a policy that they can take to the American people that will grab hearts and minds? Or is it simply playing around the edges?

Well, it is deadly serious, and it's not humorous at all. I rise today to discuss what is a most important constitutional conflict that has developed here in the Senate. And in response to that, I believe the Senate must act clearly and profoundly on this issue.

In the time that I've been in public office, I've watched and participated with the Congress in conflicts that some would call historic by nature. An impeachment, a contested election, a mid-session shift in party control over the Senate, that's just to name a few. But no issue, in my opinion, has threatened to alter the fundamental architecture of government in the way that it is now being threatened today in the conflict over judicial nominees.

Some of our colleagues have attempted to downplay the importance of the issue. I think that's what you heard this morning in reducing the issue to a debate about Tom Delay's wisdom or a quote about the Internet. This is a lot more important than any one individual, including Tom Delay. This is really about the Constitution of the United States.

They've attempted to call it "just business as usual" to oppose nominees. They've tried to portray it as insignificant in terms of the number of judges filibustered versus those confirmed. You just heard that a few moments ago, about the selective filibusters they say are fair and full process. They have characterized it as a simple political struggle between parties.

Well, it is political, but it's constitutional. In reality, this issue has the potential of altering the balance of power established by the U.S. Constitution between two branches of government. I say this because the Constitution gives the Senate a role in presidential appointments – the ability to accept or reject an appointment – and when a filibuster stops the Senate from taking the vote, it is frustrating the ability of all Senators to fulfill their constitutional duty, to exercise their fundamental constitutional power, and participate in this essential function of the executive.

But the filibuster doesn't just prevent the Senate from acting. It also stops a nominee in mid-process without a final decision as to whether a nominee is confirmed or rejected – in essence, giving a minority of Senators the power to prevent the executive branch from performing its constitutional duties. And that is exactly what we've seen by design, by intent and without question by focus in this conflict.

Let me talk about a candidate specifically. Let me talk about my own home state of Idaho and the President's nominee from my State to the Ninth Circuit, Bill Myers.

Bill has had a distinguished career as an attorney, particularly in the area of natural resources and the public land laws of our country, where he's nationally recognized as an expert by both sides. These are issues of particular importance to public

land states in the West, like Idaho, represented in the Ninth Circuit Court. These issues aren't just professional business to him. In his private life, he has also long been an outdoorsman, and he has spent a significant amount of time volunteering for the National Park Service. Bill Myers is a public land man. He loves it. He enjoys it. He has participated in it.

He came to this Senate to work for a Former Senator, Alan Simpson; served as Deputy General Counsel for the Department of Energy; and Assistant Attorney General to the United States.

The Senate confirmed him by unanimous consent as the Solicitor to the Department of Interior in 2001.

The entire Idaho delegation supports him. So what's wrong with Bill Myers? Is it a partisan issue? No. Former Democrat governor Cecil Andrus of Idaho said Bill Myers is a man of great personal integrity, judicial temperament, and legal experience, and has the ability to act fairly in matters of law that will come before him and the court. The Democratic governor from Wyoming, Mike Sullivan, said the same thing.

So what's wrong with Bill Myers? Why, when last year the Senate Judiciary Committee voted to send his nomination to the floor, he never got a vote? Why was he refused a vote and filibustered?

Let me tell you why. I know it firsthand. I served on the Judiciary Committee. I watched the vote. And the day the Senate Judiciary Committee voted to send his nomination to the floor of the Senate, a senior member from the other side of that committee walked out with me and said, you know, Larry, your nominee is not going to get a vote on the floor. They had planned it well in advance. They had picked Bill Myers like they have picked other judicial nominees for their political purposes.

Now the conversation went on, but it was private, and I won't divulge it. But I will say this, from the conversation, I understood very clearly why Bill Myers would not get a vote and they would filibuster him. It was just prior to the election – a very important election – a presidential election. They had already picked the candidate they could argue had racial undertones. They had already picked the candidate that they believed might be pro-life. They had already picked other candidates that didn't fit the political demographics of their base. They picked Bill Myers because of his environmental record. And they told me so.

Now, is that picking a person because of their talent, because of their experience, because of their judicial temperament? Or is it simply playing what I call the nominee process of political roulette? Pick the candidate that serves your political purpose, and prove to your constituent base that you're out there for them.

If that's what the nominating process has reduced itself to, then we are, without question, in a constitutional crisis. What we do is important here in the United States

Senate. We affect the lives of all Americans in one way or another. But we have a constitutional responsibility when it comes to judges that are nominated by our President, that are sent forth by the Judiciary Committee of this Senate, once fully vetted and interviewed and questioned.

And once the majority of that committee has spoken and that nominee comes to the floor of the United States Senate, I firmly believe that that nominee deserves an up-or-down vote. That is the history of the Senate. That is the responsibility of advise and consent. That is what this Senate has done down through the decades. But not now. Not in the politics of the other party; it doesn't serve their purpose anymore. And so they've reduced it to the rhetoric of saying, well, this is just normal, this is just usual, this is just the politics of the day, and those Republicans are being terribly political at this moment.

I don't agree with that. I've watched this conflict unfold much too long. It is now time for the Senate to act to establish once again our constitutional role in the advise and consent process with the executive branch of government.

I yield the floor.